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CHARLES ELMORE

Supreme Court of the United States

October Term, 1931.

No. 171.

FIRST NATIONAL BANK OF BOSTON,
Executor of the Estate of Edward H. Haskell, Deceased,
Appellant,

vs.

STATE OF MAINE,
by Clement F. Robinson, Attorney-General,
Appellee.

APPELLANT'S REPLY BRIEF

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I. THE SHARES IN QUESTION HAD NO "BUSINESS SITUS" IN MAINE, AND THE "BUSINESS SITUS" OF THE CORPORATION ISSUING SUCH SHARES IS IMMATERIAL.

To counsel for Appellant, the argument of the Attorney General as to "business situs" (Page 9 et seq. of his brief) is not clear. He admits that the certificates themselves had no business situs in Maine. They were kept by the owner in Massachusetts where he was domiciled. He was not engaged in any business within the State of Maine, and employed no local agent there to conduct any business. All the cases decided by this Court relative to business situs so-called, with which we are familiar, are based upon a situation where a

non-resident of a state has for some reason chosen to localize within that state the *intangibles* owned by him which were involved in the particular case.

The brief for the State of Maine is the first instance known to us of a contention that a business situs may be attached to shares of stock because the corporation issuing the shares does business within the state seeking to impose the tax. We submit that there is no logical reason for sustaining this novel contention.

Rhode Island Hospital Trust Company v. *Doughton*, 270 U. S. 83, clearly settles so far as this Court is concerned the principle that the ownership of the property is in the corporation and that its stockholders are not owners of an aliquot part of the corporate property. If then, the defendant's testator kept his certificates outside the State of Maine, as is admittedly the fact, and if, as this Court has held, the ownership thereof gave him no title to any of the property of the corporation, he owned no property in Maine and no question of business situs in Maine can arise.

In the *Farmers* case, certainly the situs of Minneapolis and St. Paul was in Minnesota, as much as the property of the corporation in the instant case had a situs in Maine. Yet this Court held that no question of business situs there arose.

II. THE TAX SOUGHT TO BE IMPOSED BY MAINE IS A "DOUBLE" OR "MULTIPLE" TAX. THE "SPLIT TAX" THEORY ADVANCED BY THE STATE IS UNTENABLE.

The Attorney General of Maine (Page 21 et seq. of his brief) has devised another unique theory to defend the double taxation sustained by the Maine Court. He suggests that as to shares of stock, the proper method of taxation is for the state of domicile to levy a tax and the state of incorporation likewise, and that this is what was done in the present case. He then suggests that this does not amount to double taxa-

tion but is as he calls it a "split tax", and in an ingenious and interesting dissertation contends that it should be upheld as such and so constitutes an ideal solution of the problem.

The facts are not in accord with his suggestion. Massachusetts, the state of domicile of the owner, levied and collected all the tax collectible under its laws without any reference to what, if any, tax was payable under the laws of the state of incorporation. When Maine, therefore, seeks to impose any tax in addition to the Massachusetts tax, the burden upon the Estate is increased and we have a clear case of double or multiple taxation. If Maine has the right to impose the tax here in question, it could not be urged that it was under any obligation to give credit for the tax paid Massachusetts, save only that it makes a like deduction in the case of its own residents under one of its own statutes expressly providing for such deduction. We submit it is not a question of the mathematical amount of the tax imposed, but of the right of the state of incorporation to levy any tax for the privilege of devolution granted and taxed by the state of domicile.

Respectfully submitted,

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